THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION Nos.14082, 14083 AND 14084 OF 2007

DATED 03RD JULY, 2007

BETWEEN

M/s.Matrushri Cooperative House Building Society Limited,
rep.by its President Koduru Chitti Babu

… Petitioner

AND

The Commissioner of Appeals, O/o Chief Commissioner of Land Administrations, Andhra Pradesh, Hyderabad and others.

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION Nos.14082, 14083 AND 14084 OF 2007

COMMON ORDER:

Writ petition Nos.14082 and 14083 of 2007 are filed by two separate cooperative societies, whereas W.P.No.14084 of 2007 is filed by an individual. In all the writ petitions, the petitioners seek a similar relief: a writ of Mandamus declaring the action of the Tahsildar, Gajuwaka in erecting flags in the land comprised in R.S.Nos.8/6 and 47 (admeasuring Acs.1.35 and Acs.2.00 respectively), Survey Nos.27, 29/3 and 29/4 (admeasuring total extent of Acs.7.78) and R.S.No.24(P) (admeasuring Acs.9.00) of Kurmannapalem Village, Gajuwaka Mandal, Visakhapatnam District. The events leading to filing of these writ petitions are the same and the point involved is also the same. Therefore, it is expedient to dispose of the matters by common order.

The cause of action for filing these writ petitions as pleaded in para 4 of the affidavit accompanying each of the writ petition is that the Tahsildar (fourth respondent in all the writ petitions) got erected flags in the land, which is allegedly in possession of the petitioners on the ground that the land is a 'waste land' as per the revenue records and that the Government is going to take possession of the land for assigning it to landless poor persons by way of 'D' form pattas. What is the interest of the petitioners in the land? The petitioners allege that the land is situated in Kurmannapalem Village, Gajuwaka Mandal of Visakhapatnam District, that it formed part of Vizianagaram Zamin Estate, which was taken over by the Government under A.P. (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, 1948 (Estates Abolition Act, for short), and that the land in the respective survey numbers is a 'Ryoti land'. Be it noted, the two cooperative

societies claim that they purchased the lands under registered documents from those persons who are entitled for ryotwari patta. The petitioners also claim that they are entitled for ryotwari patta under the Estates Abolition Act. When they approached third respondent (settlement officer), he passed orders on 21.08.2004 rejecting the claim of petitioners for ryotwari patta. The reason being that petitioners failed to prove continuous possession as per pre-abolition records. Be that as it is, the petitioners filed an Appeal before the Commissioner of Appeals against the proceedings of the settlement officer. The appellate authority, by order, dated 16.03.2006, remitted the matter to settlement officer for fresh enquiry. The enquiry is still pending. In the meanwhile, it is alleged that Tahsildar erected flag poles in their land.

Learned counsel for petitioners vehemently submits that when enquiry under Estates Abolition Act is pending, any attempt by revenue authorities to dispossess them would be illegal. He submits that after the Estate was taken over by Government on 07.04.1949, the land was held to be 'Ryoti land' and therefore, the same does not vest in the Government, in which event, the respondents could not have identified the land for assignment to third parties. According to learned counsel, the petitioners or their vendors or predecessors of the vendors were in continuous possession of the land and that they are entitled for patta. He also submits that initially the settlement officer erroneously came to the conclusion that the petitioners or their vendors are not entitled for patta and on remand the fresh enquiry is being conducted by settlement officer. Therefore, according to learned counsel, if at this stage, 'D' form pattas are granted assigning the land to third parties, it would render the applications pending before the settlement officer infructuous. He also relies on Full Bench Judgment of this Court in **C.Muthayya v G.Gopalakrishnayya**[1] and Division Bench Judgment in **Dama Kothilingam v Joint Collector, Prakasam District, Ongole**[2].

Learned Assistant Government Pleader for Revenue (General-A) submits that as per pre-abolition records, the land was described as 'waste land', in which event, it vests in the State as per Section 3(d) of Estates Abolition Act and therefore, the petitioners have no *prima facie* claim for ryotwari patta. In such an event, the learned Assistant Government Pleader would urge that it is always permissible for the Government or the Tahsildar to take possession of the land as the right of the petitioners for ryotwari patta has not been accepted so far. He also denies the allegations made by the petitioners in para 4 of the affidavit that the fourth respondent erected flag poles in the petitioners' land.

When the petitioners filed applications before the settlement officer for grant of patta, settlement officer rejected claim in S.R.11(a)/3/2004/F2 (Rc.No.3039A/2001, F2), dated 21.08.2004, it was found that the petitioners failed to prove continuous possession for pre-abolition period and that the land was classified in the revenue records as 'Banjar' (waste land). The appellate authority, namely, the Commissioner of Appeals, also adverts to this aspect of the matter. Therefore, conclusively, it cannot be said that it is a ryoti land, in which event, the *prima facie* right of the petitioners is doubtful. Secondly, mere survey of the land by Tahsildar, including erection of flag poles as alleged by itself does not amount to interference of possession of the land. A perusal of the relevant allegation in the affidavit accompanying the writ petitions would not inspire any confidence in the Court regarding cause of action. It is a mere apprehension.

In **C.Muthayya** (supra), the Full Bench *inter alia* considered the question whether the civil Court can entertain an action for determination of one's claim to title and possession of particular land, which is not taken away by reason of any decision rendered by competent authority under Section 56(1) of the Estates Abolition Act (see reference order of Justice Obul Reddy; as His Lordship then was). The Full Bench held in the affirmative thus:

> What follows is that when the pre-existing rights have been recognized under the Act and a ryot in possession of the land cannot be dispossessed if he is found prima facie entitled to patta, it will be unrealistic to say that any such person, if dispossessed or is threatened with dispossession cannot institute a suit to protect his right of possession. The above said decisions in our view rightly take the view that such a suit can be filed in a civil Court even though the person in possession may not have been granted patta. Section 9 C.P.C., does not stand in the way of such suit. We are therefore satisfied that the suit which the plaintiff in possession has filed was quite cognizable by the civil Court and was not barred by any provisions of the Act. In a way, Section 64 of the Act supports the view.

As a question of fact, Full Bench also found that the plaintiffs therein had proved possession as on the date of the suit, and therefore, they were entitled for injunction. The decision of the Full Bench in **C.Muthayya** (supra) is followed by Division Bench in **Dama Kothilingam** (supra). The Division Bench also observed that pending consideration of the claim, settlement officer should not assign the land in favour of any third parties till disposal of the application. Therefore, the two decisions relied on by the learned counsel for petitioner would not support the contention that revenue officials should be restrained

from interfering with possession in every case where claim for ryotwari patta is pending. The Full Bench lays down that even while the claim for ryotwari patta under Section 11(a) or 56(1)(c) of the Estates Abolition Act is pending, the person who is *prima facie* having a right and possession can maintain the suit. The Division Bench only granted relief of directing the settlement officer not to assign the land.

The attention of this Court has been invited to the notice of enquiry given by the settlement officer to show that enquiry is still pending. Therefore, it would be better if the matter is decided expeditiously. The Joint collector may dispose of the matter immediately within a period of four weeks from the date of receipt of copy of this order. He may also consider directing the Tahsildar not to assign the land to others pending consideration of the claim of petitioners. As mentioned supra, the writ petitions are filed on a mere apprehension without any basis, and therefore, cannot be entertained.

The writ petitions, with the above observations, are accordingly dismissed. No costs.

(V.V.S.RAO,J)

03.07.2007.
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[1] 1973 (2) APLJ 209 (FB)
[2] 2002 (6) ALD 1 (DB)